

1 BEFORE THE WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

2
3 FUTUREWISE,

Petitioner,

CASE NO. 05-2-0012

5 v.

6 SKAGIT COUNTY,

**FINAL DECISION AND
ORDER**

9 And

8 Respondent,

10 Mount Vernon School District 320, WJY Associates,
11 and City of Mount Vernon,

12
13 Intervenors.

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15 **I. SYNOPSIS OF DECISION**

16 This matter comes to the Board as a result of a petition for review filed by Futurewise.
17 Futurewise challenges two of the 2004 amendments to Skagit County's comprehensive
18 plan: one affecting property owned by WJY Associates (WJY); and one affecting property
19 owned by the Mount Vernon School District, Number 320 (School District). The County de-
20 designated both of the properties from their designation as Agricultural Resource Land (AG-
21 RL)¹ and added them to the Mount Vernon Urban Growth Area (UGA). The WJY property
22 was given a commercial designation. The School District property was given the interim
23 designation of Mount Vernon Urban Development District, until the City, in consultation with
24 the School District, determined its ultimate designation, based on School District needs.
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28 Petitioner Futurewise argues that the County should not have de-designated either of these
29 properties because both properties still met the County's criteria for AG-RL. Futurewise
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32 ¹ Skagit County's term for Agricultural Lands of Long-term Commercial Significance.

1 also contends that the County should not have included these properties in the Mount
2 Vernon UGA because the County did not “show its work.” Specifically, Futurewise
3 maintains that the County did not show that the City had a need for these properties and
4 that the pre-existing UGA is inadequate to support existing population growth.
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7 In this decision, the Board finds that the de-designation of the WJY property from its natural
8 resource designation (AG-RL) complies with the County’s agricultural resource land
9 designation criteria and its code requirements for making a natural resource land
10 comprehensive plan amendment, thus complying with the GMA. The property consists of
11 two parcels, each less than five acres. The County’s designation criterion for the AG-RL
12 designation requires a minimum parcel size of five acres. Under the County’s code
13 provisions for AG-RL mapping changes, an error in initial designation or new information on
14 natural resource land status may form the basis for a comprehensive plan amendment to
15 change an agricultural resource land designation. Because the comprehensive plan
16 designation criteria and the development code provisions governing comprehensive plan
17 amendments are deemed compliant with the GMA, a de-designation of AG-RL lands in
18 compliance with those provisions of the County’s plan and development code is also
19 deemed compliant with the GMA.
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23 However, the Board finds that the County’s de-designation of the School District’s property
24 as AG-RL is clearly erroneous because the School District’s property still meets the
25 County’s AG-RL designation criteria, and does not fall within the County’s provisions for
26 making a comprehensive plan amendment mapping change. The County and the School
27 District entered into an agreement to impose mitigation measures on this de-designation as
28 a result of the County’s environmental review process for its comprehensive plan
29 amendments. However, this is clearly not “new information” as set out in the County code
30 as a basis for making a natural resource land de-designation decision. This is an
31 agreement based on the landowner’s desire to use agricultural resource lands for another
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1 purpose. This rationale does not comport with the County's own criteria for a designation
2 change for AG-RL lands and cannot, therefore, comply with the GMA.

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4 Since the de-designation of the School District property does not comply with the GMA, it
5 cannot be included in an urban growth area (UGA). Agricultural resource land may not be
6 added to a UGA. Policy 4A-1.7 CP.
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9 The inclusion of the WJY property in the Mount Vernon UGA does not comply with the GMA
10 requirements for expansion of UGA boundaries, or the County's own requirements for an
11 expansion. A UGA expansion should not be based upon the desire of a landowner for a
12 change in the designation of his property but upon the County's need for additional urban
13 lands. Under the County's own code, such need must be demonstrated in light of several
14 factors, including an analysis of the County's Office of Financial Management (OFM)
15 population allocation and existing urban densities and infill opportunities. Such an analysis
16 has not been shown here.
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18 19 **II. PROCEDURAL HISTORY**

20 On December 20, 2004, Skagit County approved its annual amendments by adopting
21 Ordinance No. 020050001. These annual amendments included approval of Proposal
22 PL03-0980 regarding changes to property owned by WJY, and Proposal PL03-0981,
23 regarding changes to property owned by the School District. Ordinance No. 020050001 de-
24 designated both these properties as AG-RLs and added them to the Mount Vernon UGA.
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27 On March 25, 2005, Futurewise filed a petition for review challenging the changes adopted
28 for the WJY and School District's properties.
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30 On April 5, 2005, the School District filed a motion to intervene on Issues 1 and 3. On
31 April 13, 2005, WJY filed a motion to intervene on Issues 1 and 3. Futurewise did not object
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1 to the intervention of either party. On April 15, 2005, the Board allowed both these parties
2 to intervene on these issues. On April 18, 2005, WJY filed a motion to intervene on all three
3 issues raised in the petition. Futurewise did not object to this amended motion. On
4 April 21, 2005, the Board granted intervention to WJY on all three issues.
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7 On April 19, 2005, the Board held a prehearing conference. Mr. John Zilavy represented
8 Futurewise; Mr. Don Anderson represented the County; and Mr. Thomas Moser represented
9 the Intervenors. Board Member Holly Gadbow presided.
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11 On April 21, 2005, the Board issued a Prehearing Order.
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14 On April 22, 2005, Futurewise filed its First Amended Petition for Review that added Mr. Joe
15 Soler and Skagitonians to Preserve Farmland as Petitioners. On May 5, 2005, the County
16 and WJY filed a joint objection to the amended petition on the grounds that, under the
17 statute, petitioners could not be added after the 60 days had lapsed for filing a petition. On
18 May 17, 2005, Petitioners filed a response to this objection. On May 16, 2005, the Board
19 granted Intervenors' motion to dismiss the amended petition for review.
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22 On May 16, 2005, the City of Mount Vernon filed a motion to intervene. Petitioner did not
23 object to the City's intervention. The Board issued an order allowing the City to intervene
24 and requiring all parties to adhere to the prehearing order on May 31, 2005.
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26 On July 7, 2005, Petitioner submitted its prehearing brief.
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29 On July 27, 2005, the Board received prehearing briefs from WJY, the School District, and
30 the City of Mount Vernon. On July 28, 2005, the Board received the County's Response
31 Brief that declared it joined in the briefs and arguments of the School District and WJY.
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1 On July 27, 2005, the Board also received WJY's motion to supplement the record with an
2 ordinance and a city map showing that the South Mount Vernon UGA had been annexed to
3 the City.
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5 A Hearing on the Merits was held in Mount Vernon on August 11, 2005. Mr. John Zilavy
6 represented Futurewise; Mr. Thomas Moser represented WJY; Mr. Alexander Mackie
7 represented the School District; and Mr. Kevin Rogerson represented the City of Mount
8 Vernon. All three Board members attended.
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11 At the Hearing on the Merits the Presiding Officer allowed WJY to supplement the record
12 with an ordinance and the City's map showing the annexation of the South Mount Vernon
13 UGA. This was given Exhibit No. 186. The Board also allowed the City, the County and the
14 School District to submit additional information in response to Board questions. The City
15 submitted a portion of the Countywide Overall Development Plan (February 2000), an
16 October 20, 1999, memo on amending the Countywide Planning Policies (CPP). The
17 School District submitted an aerial photograph of the School District's property on August
18 29, 2005. The County submitted the text of CPP 1.1 and an e-mail from County Planner
19 Kirk Johnson (no date indicated) on August 17, 2005. As a result of the post hearing
20 submissions, the following Index numbers have been given to those exhibits:
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- 23 • Part of the Overall Economic Development Study (February 2000) – Index No. 187
- 24 • Memorandum on Proposed 1999 Countywide Planning Policies (October 20, 1999) –
25 Index No. 188
- 26 • Countywide Planning Policy 1.1 – Index No. 189
- 27 • Text of undated e-mail from Skagit County Planner Kirk Johnson - Index No. 190
- 28 • Aerial photograph of School District property – Index No. 191
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III. ISSUES PRESENTED

1. *Does the adoption of Skagit County Ordinance No. 020050001, expanding the County's urban growth area by proposal PLO3-0980 and proposal PL03-0981, fail to comply with the RCW 36.70A.020(1), RCW 36.70A.020(2), and RCW 36.70A.110, and the County's duty to show its work when the record contains no evidence that these expansions are needed to accommodate the County's adopted Office of Financial Management population projection and the County did not show its work?*
2. *Does the adoption of Skagit County Ordinance No. 020050001, expanding the County's urban growth area by proposal PLO3-0980 and proposal PL03-0981, fail to comply with the RCW 36.70A.020(1), RCW 36.70A.020(2), and RCW 36.70A.110 when this area is outside of a city, is not characterized by urban growth, and is not adjacent to areas characterized by urban growth?*
3. *Does the adoption of Skagit County Ordinance No. 020050001, re-designating the Mount Vernon parcel and the WJY Associates parcel from resource to urban, fail to comply with RCW 36.70A.020(2), RCW 36.70A.020(8,) RCW 36.70A.040, RCW 36.70A.050, RCW 36.70A.060, and RCW 36.70A.170 when the parcels continue to meet GMA criteria for designation as agricultural lands of long-term commercial significance and the action therefore fails to conserve agricultural land as required by the Growth Management Act?*

IV. BURDEN OF PROOF

For purposes of board review of the comprehensive plans and development regulations adopted by local governments, the GMA establishes three major precepts: a presumption of validity; a "clearly erroneous" standard of review; and a requirement of deference to the decisions of local government.

Pursuant to RCW 36.70A.320(1), comprehensive plans, development regulations, and amendments to them are presumed valid upon adoption:

Except as provided in subsection (5) of this section, comprehensive plans and development regulations, and amendments thereto, adopted under this chapter are presumed valid upon adoption.

RCW 36.70A.320(1).

1 The statute further provides that the standard of review shall be whether the challenged
2 enactments are clearly erroneous:

3 The board shall find compliance unless it determines that the action by the state
4 agency, county, or city is clearly erroneous in view of the entire record before the
5 board and in light of the goals and requirements of this chapter.
6 RCW 36.70A.320(3).

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8 In order to find the County's action clearly erroneous, the Board must be "left with the firm
9 and definite conviction that a mistake has been made." *Department of Ecology v. PUD1*,
10 121 Wn.2d 179, 201, 849 P.2d 646 (1993).

11
12 Within the framework of state goals and requirements, the boards must grant deference to
13 local governments in how they plan for growth:

14 In recognition of the broad range of discretion that may be exercised by counties and
15 cities in how they plan for growth, consistent with the requirements and goals of this
16 chapter, the legislature intends for the boards to grant deference to the counties and
17 cities in how they plan for growth, consistent with the requirements and goals of this
18 chapter. Local comprehensive plans and development regulations require counties
19 and cities to balance priorities and options for action in full consideration of local
20 circumstances. The legislature finds that while this chapter requires local planning to
21 take place within a framework of state goals and requirements, the ultimate burden
22 and responsibility for planning, harmonizing the planning goals of this chapter, and
23 implementing a county's or city's future rests with that community.
24 RCW 36.70A.3201 (in part).

25 In sum, the burden is on the Petitioner to overcome the presumption of validity and
26 demonstrate that any action taken by the County is clearly erroneous in light of the goals
27 and requirements of Ch. 36.70A RCW (the Growth Management Act). RCW 36.70A.320(2).
28 Where not clearly erroneous and thus within the framework of state goals and requirements,
29 the planning choices of the local government must be granted deference.
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V. DISCUSSION

Issue 3 addresses the de-designation of the Mount Vernon School District and WJY properties. Issues 1 and 2 address the inclusion of these properties in the Mount Vernon Urban Growth Area (UGA). Before it could consider expanding the UGA boundaries to include either property, the County first needed to determine whether these properties could be de-designated as agricultural lands of long-term commercial significance. This is, in fact the process that the County used. Therefore, we will discuss Issue 3 first, and then Issues 1 and 2 together.

Issue No. 3: Does the adoption of Skagit County Ordinance No. 020050001, re-designating the Mount Vernon parcel and the WJY Associates parcel from resource to urban, fail to comply with RCW 36.70A.020(2), RCW 36.70A.020(8,) RCW 36.70A.040, RCW 36.70A.050, RCW 36.70A.060, and RCW 36.70A.170 when the parcels continue to meet GMA criteria for designation as agricultural lands of long-term commercial significance and the action therefore fails to conserve agricultural land as required by the Growth Management Act?

Positions of the Parties

Petitioner Futurewise Position

Petitioner Futurewise argues the WJY property and the School District Property do not comply with the Growth Management Act (GMA) because both properties continue to meet both the County's and the GMA's criteria for designation as agricultural lands of long-term commercial significance. Petitioner's Prehearing Brief (July 7, 2005) at 17. For the WJY property, Petitioner disputes Skagit County's reasoning that this property no longer meets the County's designation criteria for AG-RLs due to presence of compacted soils and parcel size. Petitioner argues that no evidence exists in the record to support the presence of compacted soils, and that in fact, the soil is classified as "Sandy Loam," a prime soil according to the Skagit County Code and USDA classifications. Petitioner contends that the WJY parcel is actually one parcel of approximately 6.1 acres divided into two sections. Petitioner maintains Skagit County records indicate that the property is one parcel because

1 both parcels have one *P* number and the lot certification form shows the property as one lot
2 of record. *Ibid* at 24.

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4 Petitioner also argues that expanding the UGA to the east side of I-5 fails to ensure against
5 the incursion of incompatible uses into agricultural lands and that the expansion will put
6 pressure on other agricultural properties to develop in similar fashion. Petitioner states the
7 record shows this is already occurring as the landowners to the south requested inclusion in
8 the UGA expansion. *Ibid* at 13.

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11 Intervenor WJY's and City of Mount Vernon's Position – WJY Property

12 Intervenor WJY and the City of Mount Vernon disagree with Futurewise's contention that
13 its property is not two separate parcels. WJY and the City maintain that the record shows
14 that the property is two separate parcels, each of which is less than five acres in size. WJY
15 Associates Prehearing Response Brief (July 27, 2005) at 1 and 2 and Intervenor City of
16 Mount Vernon's Prehearing Brief (July 28, 2005) at 12.

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19 Both WJY and the City cite the criteria listed in Policy 4A-3.1 and Policy 4A-3.2 of the
20 Skagit County comprehensive plan that state all lands in unincorporated Skagit County that
21 are 5 acres or greater with certain soil types should be identified and retained as AG-RLs.
22 WJY Associates Prehearing Response Brief at 6 and 7; Intervenor City of Mount Vernon's
23 Prehearing Brief at 11. WJY and the City conclude that because the record shows that the
24 property consists of two parcels – each one being less than 5 acres - then this property
25 does not meet the County's criteria for lands that may be designated AG-RL. Therefore,
26 they argue, the County's decision to de-designate these lands as AG-RLs is supportable
27 under the County's designation criteria. Furthermore, WJY and the City cite the County's
28 staff report that points out that Cedardale Road divides its property from adjacent
29 designated agricultural lands to prevent the incursion of incompatible uses. *Ibid* at 5.

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32 Intervenor City of Mount Vernon's Prehearing Brief at 13.

1 City and School District Position

2 As to the School District property, the City argues that, to be considered for designation as
3 an agricultural land of long-term commercial significance, the land must meet a two-prong
4 definition: (1) the land must be primarily devoted to agriculture; and (2) the land must have
5 long-term commercial significance for agricultural production. The City and the School
6 District both contend that the County must also consider the guidelines published by the
7 Department of Community, Trade, and Economic Development (CTED) that include
8 proximity to population areas and possibility of more intense uses for the property to satisfy
9 this two-pronged test. These Intervenor maintain that the de-designation of the School
10 District's property is consistent with WAC 365-190-050 because the property is adjacent to
11 the Mount Vernon city limits, has urban services readily available, and is needed by the
12 School District for a more intense public use. Intervenor City of Mount Vernon's Prehearing
13 Brief at 10. Mount Vernon School District Brief at 5.

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17 The City asserts that the record supports that a mistake was made in the initial designation
18 of this property, when only part of it was included in the UGA. The City cites a letter from a
19 land use consultant that gives the following reasons for this assertion: the boundary divides
20 property under one ownership, the only access to the portion left out of the UGA is through
21 the adjacent UGA property, and the decision did not include preliminary work conducted by
22 the School District for the whole parcel. Bk. 1, Ex. 45. Intervenor City' of Mount Vernon's
23 Prehearing Brief at 6.

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25
26 Finally, the School District says that the fact that the impacts to adjacent agricultural land
27 and loss of agricultural land are mitigated is relevant to the County's decision to de-
28 designate this property as AG-RL and to include it in the UGA. Mount Vernon School
29 District Prehearing Brief at 10.

1 **Board Analysis**

2 Designating and Conserving Agricultural Lands and the De-Designation Process:

3 Futurewise has challenged the County's de-designation of agricultural lands on the basis of
4 GMA provisions regarding the requirement to designate and conserve such lands – RCW
5 36.70A.040, 36.70A.060, and 36.70A.170. The City and School District respond that these
6 de-designations comply with CTED's Minimum Guidelines, Chapter 265-190 WAC. WJY
7 maintains that the de-designation of its property complies with the County's code for making
8 mapping changes to AG-RLs.
9

10
11 Skagit County is required by the GMA to designate Agricultural Lands of Long-term
12 Commercial Significance:

13 1) On or before September 1, 1991, each county, and each city, shall designate
14 where appropriate: (a) Agricultural lands that are not already characterized by urban
15 growth and that have long-term significance for the commercial production of food or
16 other agricultural products....

17 RCW 36.70A.170(1).

18 In making these designations, the County was required to consider the Minimum Guidelines
19 established at the direction of RCW 36.70A.050. RCW 36.70A.170(2). These guidelines
20 were published by the Washington Department of Community, Trade and Economic
21 Development (CTED) as Chapter 365-190 WAC.
22

23 Skagit County established its AG-RL designation criteria for AG-RL designations, and
24 agricultural conservation measures in its comprehensive plan. Skagit County
25 Comprehensive Plan at 4-13 to 4-15. These measures are not subject to challenge here
26 and therefore, they are deemed compliant with the Minimum Guidelines, as well as the other
27 provisions of the GMA governing designation of agricultural resource lands. (RCW
28 36.70A.040, 36.70A.060, and 36.70A.170, and the applicable definitions in 36.70A.030.)
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31 The County also has compliant measures for protecting agricultural resource lands from
32 incompatible uses, including SCC 14.16.810(7) (requiring 200-foot buffers on adjacent non-

1 resource lands with certain exceptions), and SCC 14.38 (Right to Manage Resource Lands
2 provisions).

3
4 The County has also adopted amendment procedures, as WAC 365-190-040 (2)(b)(viii)
5 recommends, that limit the circumstances under which a de-designation of natural resource
6 lands may be considered. These are set out in both the County's comprehensive plan and
7 the County's development regulations. See Skagit County Comprehensive Plan at 2-6 to 2-
8 9 and SCC14.08.020(5). SCC 14.08.020(5)(d) specifies the following basis for changing the
9 designation for agricultural resources lands:
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12 Any proposed natural resource land changes shall recognize that natural resource
13 land designations were intended to be long-term designations and shall be further
dependent on one or more of the following:

- 14 i. A change in circumstances pertaining to the Comprehensive Plan or public
15 policy.
16 ii. A change in circumstances beyond the control of the landowner pertaining
to the subject property.
17 iii. An error in the initial designation.
18 iv. New information on natural resource land or critical area status.
19 SCC 14.08.020 (5)(d).

20 In making de-designation decisions to AG-RL properties, the County is required to follow its
21 comprehensive plan policies for designation of such lands (Comprehensive Plan at 2-6 to 2-
22 9) and its code provisions for natural resource land designation amendments (SCC
23 14.08.020(5)(d)).
24

25 WJY De-Designation:
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27 The record shows that the County applied the County's designation criteria and SCC
28 14.08.020(5)(d) when it made its decision to de-designate the WJY property as an AG-RL.
29 The County's criteria for designation of AG-NRL require a minimum parcel size of 5 acres.
30 See Policy 4A-3.1 and 4A-3.2.
31
32

1 The lot certification report shows the WJY property consists of two lots of less than five
2 acres each. Exhibit Bk. 19 Ex. 3.

3
4 Evidence in the record also shows that the County staff applied the County's designation
5 criteria and code provisions for natural resource lands mapping changes to make its
6 recommendation to the Planning Commission. In its October 12 revised staff report, the
7 staff recommended that only the northerly parcel be de-designated, and the parcel south of
8 old Highway 99 overpass should be considered with other proposals for designation to be
9 considered in subsequent years, but verified that the parcel contained two lots that did not
10 meet the designation criteria for AG-RL. Exhibit Bk. 1, Ex. 62 at 10.

11
12 The County Commission also adopted supplemental findings to indicate that their reasons
13 for de-designation included the fact that the WJY's property consists of two parcels that do
14 not meet the County's threshold designation criterion. They also found that the parcels
15 were completely bound by roads, including Cedardale Road, which would prevent the
16 incursion of incompatible uses into resource lands. Ordinance No. 020050001, Exhibit B,
17 at 26.

18
19 Under the County code, a natural resource land mapping amendment must meet one of four
20 possible conditions – a change in circumstances pertaining to the Comprehensive Plan or
21 public policy; a change in circumstances beyond the control of the landowner pertaining to
22 the subject property; an error in initial designation; or new information on natural resource
23 land or critical area status. SCC 14.08.020(5)(d). Since neither parcel of the WJY property
24 meets the 5-acre minimum parcel size, either the initial designation of those parcels was in
25 error or that fact is new information about the natural resource land status of the property.
26 Either way, the mapping change to de-designate the WJY parcels from AG-RL complies
27 with the County's code.
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1 The County's July 8, 2004, staff report and environmental analysis also considered this
2 property's impacts on adjacent resource lands and noted:

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4 This proposal could be seen as incursion into this area, but Cedardale Road, forms
5 an effective limit to further extension into farmland to the east.
6 Exhibit Bk. 1, Ex. 35 at 18.

7 **Conclusion:** We find that the County's decision to de-designate the WJY property
8 complies with RCW 36.70A.170, RCW 36.70A.060, RCW 36.70A.040, and RCW
9 36.70A.020(2) and (8). In considering its own criteria for the designation of Agricultural
10 Resource Lands, the County found (1) that the property did not meet the County's criteria
11 for parcel size; and (2) the failure to meet the County's threshold parcel size for AG-RL
12 fulfills the County's criteria for map changes to AG-RL, because it either constituted an error
13 in the initial designation or new information affecting AG-RL status. The fact that the
14 property is bounded by roads helps prevent the incursion of incompatible uses into adjacent
15 AG-RLs.
16

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18 School District Property De-designation:

19 However, in regard to the School District property, the record shows that Skagit County did
20 not follow its own designation criteria and code provisions for changing the designation of
21 AG- RLs. See Skagit County Comprehensive Plan Policies 4A-3.1 through 4A-3.4 and SCC
22 14.18.020(d). The staff reports acknowledge that this property still meets the designation
23 criteria and that the staff can find no evidence that a mapping error was made. Exhibit Bk. 1,
24 Ex. 35 at 17. The County's July 8, 2004, staff report and environmental analysis states that
25 the School District's parcel "continues to meet the majority of the County's AG-NRL
26 designation and could be restored to active agricultural use." Exhibit Bk. 1, Ex. 35 at 17.
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28

29 In finding that an amendment to change the designation of the School District AG-RL
30 property could be brought, the County determined that there was "new information" on the
31 status of natural resource land. Exhibit Bk. 2, Ex. 62 at 9. However, that new information
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1 was not information affecting the qualification of the School District property for AG-RL
2 status. It was instead a negotiated agreement between the County and the School District
3 on mitigation conditions for the de-designation. Exhibit Bk. 2, Ex. 62 at 9. This agreement
4 is not new information – it is an agreement imposing conditions on this comprehensive
5 amendment as a result of the environmental review process. Nothing in the County’s own
6 criteria for AG-RL or in the development regulations allows a change in natural resource
7 designation through the imposition of mitigating conditions. SCC 14.08.020(5)(d).
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10 **Conclusion:** We therefore conclude that the de-designation did not comport with the
11 County’s own rules and policies and cannot therefore be compliant with the GMA. The de-
12 designation of the School District property does not comply with SCC 14.18.020(5)(d),
13 Skagit County comprehensive plan AG-RL designation criteria, RCW 36.70A.170(1), and
14 RCW 36.70A.020(8).
15

16 ***Issue No. 1: Does the adoption of Skagit County Ordinance No. 020050001,***
17 ***expanding the County’s urban growth area by proposal PLO3-0980 and proposal***
18 ***PL03-0981, fail to comply with the RCW 36.70A.020(1), RCW 36.70A.020(2), RCW***
19 ***36.70A.110 and the County’s duty to show its work when the record contains no***
20 ***evidence that these expansions are needed to accommodate the County’s adopted***
21 ***Office of Financial Management population projection and the County did not show***
22 ***its work?***

23 ***Issue No. 2: Does the adoption of Skagit County Ordinance No. 020050001,***
24 ***expanding the County’s urban growth area by proposal PLO3-0980 and proposal***
25 ***PL03-0981, fail to comply with the RCW 36.70A.020(1), RCW 36.70A.020(2), RCW***
26 ***36.70A.110 when this area is outside of a city, is not characterized by urban growth,***
27 ***and is not adjacent to areas characterized by urban growth?***

28 We will address these related issues together.
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1 **Positions of the Parties**

2 Futurewise

3 Petitioner Futurewise argues that in sizing UGAs, a County must show its work, so that the
4 public can comment on its policy choices. Petitioner cites a Court of Appeals Decision and
5 cases from all three Growth Management Hearings Boards to support its position.
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7 Petitioner contends that the County has added the School District and WJY properties to the
8 Mount Vernon UGA without any demonstration that the expansion is needed to support the
9 adopted Office of Financial Management Forecast or that the pre-existing UGA is
10 inadequate to support population growth. Petitioner asserts the record shows that the
11 County staff has stated that the County will not do the needed analysis until it does the work
12 necessary for its seven-year update in 2005. Petitioner's Prehearing Brief at 14.
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14
15 Futurewise also declares that, by allowing the addition of these properties to the Mount
16 Vernon UGA, the County expands the UGA to areas that are not characterized by urban
17 growth or to areas adjacent to areas characterized by urban growth in violation of RCW
18 36.70A.110.
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20 City's and School District's Position as to School District Property

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22 Both the City and the School District contend that the School District's property is adjacent
23 to an area characterized by urban growth since this property adjoins School District property
24 within the UGA and is commonly owned by the School District. The adjacent School District
25 property contains a major maintenance facility inside the city limits that has full water and
26 sewer facilities, city streets, and a full component of other utilities.
27

28 City's and WJY Position as to WJY Property

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30 The City and WJY state that the City has recently annexed the property immediately to the
31 north of the WJY property making this property now adjacent to the Mount Vernon UGA.

32 Both the City and WJY contend that Countywide Policy 1.1 establishes commercial land

1 allocations for each city and that Mount Vernon has not used all of its allocation, which
2 justifies adding the WJY property to the Mount Vernon UGA. WJY maintains that
3 commercial designations surround the subject property, so a commercial designation is the
4 appropriate designation for this property.
5

6 **Board Analysis**

7 School District Property Inclusion in the UGA:

8
9 In the discussion of Issue 3 above, the Board found that this property's de-designation did
10 not comply with the County's AG-RL designation criteria or its code provisions for making a
11 mapping change for AG-RL lands. Skagit County also has adopted UGA designation
12 criteria. Comprehensive Plan Policy 4A.-1.7, one of the County comprehensive plan's UGA
13 designation criteria states:
14

15 Areas that do not have long-term commercial significant value for agriculture, forest,
16 or mineral production and are able to accommodate additional land development.
17 Policy 4A -1.7 Skagit County Comprehensive Plan at 4-9, 4-10.

18 Policy 4A – 1.7 comports with GMA requirements regarding natural resource lands in urban
19 growth areas. RCW 36.70A.060(4) states:

20 Forest land and agricultural land located within urban growth areas shall not be
21 designated by a county or city as forest land or agricultural land of long-term
22 commercial significance under RCW [36.70A.170](#) unless the city or county has
23 enacted a program authorizing transfer or purchase of development rights.
24

25 Therefore, having found that the de-designation of the School District property did not
26 comply with the GMA, the Board finds that expanding the Mount Vernon UGA to include the
27 School District property is not consistent with Policy 4A.1.7 and therefore not compliant with
28 the GMA.²
29

30
31 ² Neither the School District nor the City want this property included in the UGA as agricultural land, but only
32 seek to have it included to obtain an urban designation.

1 **Conclusion:** The Mount Vernon UGA expansion to include the School District property
2 does not comply with the County and GMA requirements for UGA expansion. RCW
3 36.70A.060(4); SCC 14.08.020(5)(b). This property has been not de-designated in
4 accordance with Skagit County's AG-RL criteria and is therefore still deemed AG-RL land.
5 Since this property is not eligible for inclusion in the UGA according to either the County's
6 comprehensive plan or the GMA, we do not reach the City's or the School District's other
7 arguments for why this property should be included in the UGA.
8

9
10 WJY Property Inclusion in the UGA:

11 In contrast to the School District property, the de-designation of the WJY property complies
12 with the County's AG-RL comprehensive plan designation criteria and the County's code
13 provisions for mapping changes of natural resource lands (SCC 14.08.020(5)(d)).
14 Therefore, the WJY property is not precluded from being part of a UGA expansion. We
15 consider whether the requirements for a UGA expansion under the County's rules and the
16 GMA have been met.
17

18
19 Parameters for UGA Expansion:

20 The determination to expand UGA boundaries is fundamentally a determination about the
21 need for additional urban lands to accommodate a variety of land uses based on the city's
22 share of the County's Office of Financial Management's population allocation for the
23 County. Therefore, a decision to expand urban growth boundaries should not be done on
24 an ad hoc basis but must be grounded in an analysis of the capacity and need for such
25 lands. RCW 36.70A.110 says (in the pertinent part):
26

27 (1)...An urban growth area may include territory that is located outside of a city only if
28 such territory already is characterized by urban growth whether or not the urban
29 growth area includes a city, or is adjacent to territory already characterized by urban
30 growth, or is a designated new fully contained community as defined by RCW

31 [36.70A.350](#)...

32 2) Based upon the growth management population projection made for the county
by the office of financial management, the county and each city within the county
shall include areas and densities sufficient to permit the urban growth that is

1 projected to occur in the county or city for the succeeding twenty-year period, except
2 for those urban growth areas contained totally within a national historical reserve.
3 Each urban growth area shall permit urban densities and shall include greenbelt and
4 open space areas. ...An urban growth area determination may include a reasonable
5 land market supply factor and shall permit a range of urban densities and uses. In
6 determining this market factor, cities and counties may consider local circumstances.
7 Cities and counties have discretion in their comprehensive plans to make many
8 choices about accommodating growth....

9 (3) Urban growth should be located first in areas already characterized by urban
10 growth that have adequate existing public facility and service capacities to serve such
11 development, second in areas already characterized by urban growth that will be
12 served adequately by a combination of both existing public facilities and services and
13 any additional needed public facilities and services that are provided by either public
14 or private sources, and third in the remaining portions of the urban growth areas.

15 This provision has been interpreted to also limit the size of UGAs as well as to ensure that
16 the UGA boundaries are sufficient to accommodate projected growth, in light of the anti-
17 sprawl goal of the GMA. *Diehl v. Mason County*, 94 Wn.App. 645, 982 P.2d 543 (Div. II,
18 1999). "... [T]he OFM projection places a cap on the amount of land a county may allocate
19 to UGAs." *Ibid* at 654. Thus, RCW 36.70A.110 requires that the UGAs be created to
20 accommodate the OFM population projection for the 20-year planning horizon and also
21 limits the size of UGAs to those lands needed to accommodate the urban population
22 projection utilized by the county.

23 Under the County's own development regulations that codified similar comprehensive plan
24 policies (Skagit County Comprehensive Plan at 2-8), expansion of the boundaries of an
25 urban growth area must be grounded in an analysis of need:

26 Any proposed urban growth area boundary changes shall be supported by and
27 dependent on population forecasts and allocated urban population distributions,
28 existing urban densities and infill opportunities, phasing and availability of adequate
29 services, proximity to designated natural resource lands and the presence of critical
30 areas.

31 SCC 14.08.020(5)(b).
32

1 WJY Boundary Expansion Analysis:

2 With these GMA and County requirements in mind, we will examine Futurewise, WJY, and
3 the City's arguments regarding the UGA expansion. Futurewise argues that the County did
4 not "show its work" and has added the WJY property to the Mount Vernon UGA without any
5 demonstration that the expansion is needed to support the adopted Office of Financial
6 Management Forecast or that the pre-existing UGA is inadequate to support population
7 growth. In response, WJY and the City maintain that the countywide planning policies allow
8 an expansion of urban growth boundaries if the allocation of commercial lands to a given
9 urban growth area has not been utilized. The County's October 12, 2004, revised staff
10 report explains how the countywide planning policies were updated in 2000 in conjunction
11 with the update of the County's Overall Economic Development Strategy. The County
12 based the amount of commercial and industrial land it needed to support its OFM population
13 forecast on this study. Countywide Planning Policy (CPP) 1.1, adopted as part of this
14 strategy, establishes urban population and commercial and industrial acreage allocation for
15 each of the City UGAs and Bayview Ridge. While this countywide planning policy forms a
16 basis for sizing the UGA, it does not provide any criteria or direction for making changes to
17 the UGA.
18
19
20

21 For Skagit County, SCC14.18.020 (5)(b) provides that direction. This policy is consistent
22 with the analysis required by RCW 36.70A.110. The analysis required for establishing UGA
23 boundaries under RCW 36.70A.110 is thorough to ensure that the UGAs are large enough
24 to accommodate projected future growth but only large enough to meet projected need, to
25 avoid the creation of sprawl. *Diehl v. Mason County*, 94 Wn.App. 645, 982 P.2d 543 (Div. II,
26 1999). *1000 Friends v. Thurston County*, WWMGHB Case No. 05-2-0002 (Final Decision
27 and Order, July 20, 2005). The County's policies accord with this requirement by ensuring
28 that expansions are not undertaken without sufficient rationale.
29
30
31
32

1 The County's revised 2003 Amendments, Staff Report and Environmental Analysis
2 (October 12, 2004) evaluated each of the proposals for UGA expansion and determined that
3 each fit within the allocation for commercial and industrial lands to each city. Skagit County
4 Planning and Development Services made this finding:

5 The Department therefore finds that sufficient need for commercial/ industrial
6 acreage exists to accommodate each of the city proposals, based on methodology
7 that has been found compliant with the Growth Management Act. CPP 1.1 does not
8 provide acreage allocations for public uses. Exhibit Bk. 2, Ex. 62 at 2.

9
10 However, finding that the WJY proposal fits within the CPP 1.1 in Mount Vernon's allocation
11 for commercial and industrial lands is not the same as performing the analysis required by
12 SCC 14.18.020 (5)(b). In fact, when it made this recommendation, the staff also noted (in
13 the October 12, 2004, revised staff report) that there are no specific standards regarding the
14 degree to which cities and counties must utilize existing designated commercial designated
15 land before they are allowed to expand their UGAs to include an additional amount based
16 on the countywide planning policies (CPP.1 commercial/ industrial lands allocation). Exhibit
17 Bk. 2, Ex. 62 at 3.

18
19
20 In fact, CPP 1.1 only establishes allocations among urban growth areas for certain kinds of
21 lands, including commercial lands. It does not set criteria for expanding urban growth
22 boundaries if an urban growth area is developed in a manner not contemplated when the
23 urban growth boundaries were established. In fact, other comprehensive plan policies
24 make such an ad hoc expansion of urban growth area boundaries problematic:

25 Locate commercial and industrial development in compact, well-defined centers.
26 Policy 7A-5.1
27

28 Allowing consideration of inclusion of commercial or industrial development in UGAs
29 Policy 4A -9.4 (in part).

30 Although the stated rationale for the urban growth boundary expansion here is the need for
31 additional commercial lands in the Mount Vernon UGA, that need has not been supported
32

1 by any analysis, particularly of available lands. The County refers to a City of Mount Vernon
2 memorandum and concludes that the land originally allocated as commercial has not been
3 used for commercial purposes. Bk. 1, Ex. 15 at 3 and 4. There is no analysis of the
4 reasons for this, whether there are infill opportunities, whether there should be policies
5 encouraging increased densities, or whether expanding the urban growth area boundaries
6 will encourage sprawl. The County quite simply has failed to "show its work" justifying an
7 expansion of UGA boundaries.
8

9
10 In this case, it is clear that the UGA expansion was granted so that the WJY property could
11 be included in the Mount Vernon UGA, rather than based on a need for an expanded UGA
12 leading supported with an analysis of that need. We do not find that the County has met its
13 own criteria for expanding the South Mount Vernon UGA to include the WJY property
14 because the expansion was not "supported and dependent" upon the required analysis
15

16
17 **Conclusion:** We find that the expansion of the Mount Vernon UGA to accomplish the
18 addition of the WJY property to the Mount Vernon UGA does not comply with RCW 36.70A.
19 110.
20

21 VI. FINDINGS OF FACT

- 22
- 23 1. Skagit County is a county located west of the crest of the Cascade Mountains which
24 is required to plan according to RCW 36.70A.040.
 - 25 2. Petitioner Futurewise is an organization that participated in writing and orally in the
26 adoption of Ordinance No. 020050001.
 - 27 3. On December 20, 2004, Skagit County approved its 2004 annual comprehensive
28 amendments by adopting Ordinance No. 020050001.
 - 29 4. These annual amendments included approval of Proposal PL03-0980 regarding
30 designation changes to property owned by WJY Associates (WJY), and Proposal
31 PL03-0981, regarding designation changes to property owned by the Mount Vernon
32 School District.

- 1 5. Skagit County's comprehensive plan policies 4A-3.1 through 4A-3.4, are compliant
2 agricultural resource land (AG-RL) designation criteria.
- 3 6. SCC 14.18.020 (5)(d) establishes the requirements for making comprehensive map
4 changes to lands designated as AG-RL.
- 5 7. The County's July 8, 2004, staff report and environmental analysis states that the
6 School District's parcel "continues to meet the majority of the County's AG-NRL
7 designation."
- 8 8. The County has compliant measures for ensuring that agricultural resource lands are
9 protected from incompatible uses, including SCC 14.16.810(7)(requiring 200-foot
10 buffers on adjacent non-resource lands with certain exceptions), and SCC 14.38
11 (Right to Manage Resource Lands provisions).
- 12 9. The July 8, 2004, Staff Report and Environmental Analysis states that dividing
13 property in a single ownership into two separate land use designations has been
14 done in several instances on the Comprehensive Plan map, and is not by itself
15 evidence of a mapping error.
- 16 11. The County Planning Commission's findings on their recommendation for de-
17 designation of the School District property were based solely on the mitigation
18 measures agreed upon in proceedings before the County's Hearing Examiner.
19 These findings were adopted by the County Commission in approving the de-
20 designation of the School District's property.
- 21 12. Mitigation measures are not "new information" about the status of a natural resource
22 land but an agreement about conditions to be imposed in order to make a
23 designation change.
- 24 13. New information that meets SCC 14.08.020(5)(d)(iv) condition for a mapping change
25 for AG-RL must relate to a change in status of the AG-RL. SCC 14.18.020 5)(d)(iv).
- 26 14. The lot certification report shows that the WJY property consists of two lots of less
27 than five acres each.
- 28 15. The minimum lot size for AG-RL designation is five acres. Skagit County
29 Comprehensive Plan policy 4A-3.1.
- 30 16. The WJY lot sizes are each less than five acres showing either that a mistake was
31 made in the initial designation of WJY's property as AG-RL or that new information
32 has been provided concerning the status of that property as natural resource land.

1 This satisfies condition SCC 14.18.020(5)(d)(iii) and makes these lots eligible for de-
2 designation as AG-RL.

- 3 17. One of the WJY parcels is completely surrounded by roads, including Cedardale
4 Road, and the other is bound on three sides by roads. These road boundaries help
5 prevent the de-designated property from creating an incursion of incompatible uses
6 into the adjacent resource lands.
- 7 18. Countywide Planning Policy 1.1 sets out the allocation to Skagit County cities for the
8 amount of land for various land uses.
- 9 19. CPP 1.1 does not provide criteria for evaluating expansions of the UGA.
- 10 20. SCC 14.18.020(5)(b) and comprehensive plan policies at 2-8 of the Skagit County
11 Comprehensive Plan require that the County analyze population forecasts and
12 allocated urban population distributions, existing urban densities and infill
13 opportunities, phasing and availability of adequate services, proximity to designated
14 natural resource lands and the presence of critical areas for changes in UGA
15 boundaries.
- 16 21. The record in this case does not show an analysis of population forecasts and
17 allocated urban population distributions and existing urban densities and infill
18 opportunities for the WJY property.
- 19 22. The County's October 12, 2004, revised staff report and environmental analysis
20 acknowledges the County does not have any specific standards to judge how
21 commercial and industrial lands are being utilized.
- 22 23. Skagit County Comprehensive Plan Policy 4A-1.7 does not allow AG-RL to be
23 included in UGAs.

24 25 26 **VII. CONCLUSIONS OF LAW**

- 27 A. The Board has jurisdiction over the parties and subject matter of this case.
- 28 B. Petitioner Futurewise has standing to challenge Ordinance No. 020050001.
- 29 C. Ordinance No. 020050001 complies with the County's comprehensive plan and RCW
30 36.70A.170, RCW 36.70A.060, and RCW 36.70A.020(8) in regard to the de-
31 designation of the WJY property from AG-RL.
32

- 1 D. Ordinance No. 020050001 does not comply with the Skagit County's comprehensive
2 plan policies, SCC 14.18.020(5)(d), RCW 36.70A.170, and RCW 36.70A.020(2) and
3 (8) in regard to de-designating the School District property.
- 4
- 5 E. Ordinance 020050001 expanding the Mount Vernon UGA boundaries to include the
6 WJY property does not comply with the County's comprehensive plan policies for
7 mapping changes for expanding UGA boundaries, SCC 14.18.020(5)(b), RCW
8 36.70A.020(2), and RCW 36.70A.110.
- 9 F. Ordinance 020050001 expanding the Mount Vernon UGA boundaries to include the
10 School District property does not comply with Skagit County comprehensive plan
11 policies and RCW 36.70A.060(4).

12 VIII. ORDER

13

14 The County is ordered to bring Ordinance No. 020050001 into compliance with the GMA
15 pursuant to this order within 180 days of this order and no later than March 20, 2006. The
16 following briefing and compliance schedule shall apply

17

Item	Date Due
Compliance Due	March 20, 2006
Compliance Report Due	April 6, 2006
Objections to a Finding of Compliance, if any	April 27, 2006
Response to Objections, if necessary	May 18, 2006
Reply to Response to Objections (optional)	May 25, 2006
Compliance Hearing	June 6, 2006

24

25 Pursuant to RCW 36.70A.300 this is a final order of the Board.

26 **Reconsideration.** Pursuant to WAC 242-02-832, you have ten (10) days from the date
27 of mailing of this Order to file a petition for reconsideration. The original and three
28 copies of a motion for reconsideration, together with any argument in support
29 thereof, should be filed with the Board by mailing, faxing, or otherwise delivering the
30 original and three copies of the motion for reconsideration directly to the Board, with
31 a copy to all other parties of record. **Filing means actual receipt of the document at**
32 **the Board office.** RCW 34.05.010(6), WAC 242-02-240, and WAC 242-02-330. The filing
of a motion for reconsideration is not a prerequisite for filing a petition for judicial
review.

1 **Judicial Review.** Any party aggrieved by a final decision of the Board may appeal the
2 decision to superior court as provided by RCW 36.70A.300(5). Proceedings for
3 judicial review may be instituted by filing a petition in superior court according to the
4 procedures specified in chapter 34.05 RCW, Part V, Judicial Review and Civil
5 Enforcement. The petition for judicial review of this Order shall be filed with the
6 appropriate court and served on the Board, the Office of the Attorney General, and all
7 parties within thirty days after service of the final order, as provided in RCW
8 34.05.542. Service on the Board may be accomplished in person or by mail, but
9 service on the Board means actual receipt of the document at the Board office within
thirty days after service of the final order. A petition for judicial review may not be
served on the Board by fax or by electronic mail.

10 **Service.** This Order was served on you the day it was deposited in the United States
11 mail. RCW 34.05.010(19)

12 Entered this 21st day of September 2005.
13
14
15

16 _____
Holly Gadbaw, Board Member
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18 _____
Margery Hite, Board Member
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21 _____
Gayle Rothrock, Board Member
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